Supreme Court, U.S.
FILED
FEB 7 1994

NO._____

IN THE
Supreme Court of the United States
OCTOBER TERM 1993

GRAYDON L. GIBSON, OLETA GIBSON,
Petitioners,
v.
DALLAS COUNTY EDUCATION DISTRICT,
Respondent.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution provides any limitations on a state's retention of admittedly invalid, illegal taxes collected, under duress, by a legislative enactment that is unconstitutional under the State's Constitution.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record, pursuant to Supreme Court Rule 14(b), certifies that the following is a list of all persons known to me as having an interest in the outcome of this appeal.

1. Graydon L. Gibson (Petitioner)
   Oleta Gibson (Petitioner)

2. Dallas County Education District (Respondent)

3. Texas Education Agency (Intervenor)

4. Attorney General of Texas (Intervenor)

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NO._____

IN THE

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OCTOBER TERM 1993

GRAYDON L. GIBSON, OLETA GIBSON,
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v.
DALLAS COUNTY EDUCATION DISTRICT,
Respondent.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioners Graydon L. Gibson and Oleta Gibson respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this action on January 5, 1994.

OPINIONS BELOW

The opinion of the Court of Appeals (App., infra, 1a-3a) is unreported. The opinion of the district court (App., infra, 4a-9a) is unreported.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on January 5, 1994. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action involves the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, *U.S. CONST.*, Amdt. 14, §1. This action also involves the Tax Injunction Act, 28 U.S.C. § 1341.

STATEMENT OF THE CASE

The Texas Tax

The 72nd Texas State Legislature enacted a state public school finance system creating County Education Districts (CEDs) on August 26, 1991. (Acts 1991, 72nd Leg., K.S., Ch. 20, 1991, Tax. Gen. Laws 381, amended by Act of May 27, 1991, Tax. Gen. Laws 1475). Texas Ed. Code §20.941, *et seq.*

Five months later, on January 30, 1992, the Texas Supreme Court held that this Texas public school finance system, referred to above, levied a state ad valorem tax prohibited by and in violation of Article VIII, Section 1(e) of the Texas Constitution and was also unconstitutional because it permitted County Education Districts to levy ad valorem taxes without prior voter approval in violation of Article VII, Section 3 of the Texas Constitution, *Farmers Branch Independent School District v. Edgewood Independent School District*, 826 S.W.2d 489, 524 (Texas 1992) (Edgewood III). The Court's opinion stated that the Texas Constitutional defects made the entire scheme of the Texas public school

finance system invalid and held that the tax scheme did not merely violate a state statute, but was beyond the constitutional authority of the 72nd Legislature to enact. *Edgewood III*, 826 S.W.2d 514, 515.

The Texas Supreme Court, relying on the retroactivity analysis of *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), also held that its ruling was only to be applied *prospectively* to the 1993 tax year and was not to be used to interfere with the collection of all 1991 and 1992 CED taxes, nor was not to be used as a defense to payment of such taxes. *Edgewood III*, 826 S.W.2d 518-522.

Petitioners Actions

Petitioners filed a class action complaint on November 18, 1992, in the United States District Court for the Northern District of Texas seeking to recover the 1991 CED ad valorem taxes assessed and collected from them. Petitioners alleged federal jurisdiction under 28 U.S.C. § 1331 as a civil action involving a federal question arising under the Constitution of the United States. Thereafter, on February 8, 1993, an amended class action complaint was filed to include the 1992 CED ad valorem taxes assessed and collected from them.

Petitioners' complaint specifically alleged that the taxing authority had no authority to tax and that the taxpayers had no "plain", "speedy" and "efficient" remedy under state law giving them a clear and certain remedy to obtain a refund of these illegal exactions and that this illegal taking of property, under duress, violated the Due Process Clause of the Fourteenth Amendment. The Texas Attorney General and the Texas Education Agency intervened in this proceeding.

On May 17, 1993, the district court below dismissed the amended complaint filed on the basis of *res judicata*. On January 5, 1994, the Court of Appeals for the Fifth Circuit affirmed the lower court's dismissal decision holding that this action is barred by the Tax Injunction Act, 28 U.S.C. § 1341.

REASONS FOR GRANTING THE WRIT

THIS COURT'S DECISIONS ON THE PROCEDURAL SAFEGUARDS OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WERE IGNORED BY THE COURT OF APPEALS

This petition presents a federal constitutional issue concerning procedural due process rights of a taxpayer under a state legislative enactment that is unconstitutional under the State's Constitution. This Court is asked whether, in the absence of a state refund remedy, federal constitutional principles compel a state to return illegal taxes, collected under duress, which violate its state constitution.

This issue presents questions of substantial public importance concerning the limitations, if any, imposed by the Due Process Clause of the Fourteenth Amendment on the rights of states to retain invalid taxes, collected under duress, which were beyond the power of the state legislature to impose.

This Court has consistently held that when state taxes are collected in violation of federal law, there is a Fourteenth Amendment Due Process obligation to return the unlawful taxes. *Ward v. Love County*, 253 U.S. 17 (1920) (unlawful taxes collected by coercive means incurs obligation to repay); *Carpenter v. Shaw*, 280 U.S. 363 (1930) (recovery of taxes exacted in violation of the Constitution of the United States,

under compulsion, contravenes the Fourteenth Amendment); *McKesson v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990) (in the absence of predeprivation remedy, demands of federal due process requires meaningful postdeprivation remedy); *American Trucking Assns. v. Smith*, 496 U.S. 167, 181 (plurality opinion) (1990); (states must afford relief from invalid taxes consistent with due process principles.); *Harper v. Virginia Dept. of Taxation*, 509 U.S. _____,125 L.Ed.2d 74, 1135, Ct. 2510 (1993) (state law may not confine taxpayers to lesser remedy than demands of federal due process.).

This Court stated in *McKesson*, 496 U.S. 35, 36,

> Because exaction of a tax constitutes a deprivation of property, the state must provide procedural safeguards against unlawful exactions to satisfy the commands of the Due Process Clause (citations omitted).

Unlike *McKesson*, the validity of the taxes here is not an issue. *Edgewood III* determined the invalidity of the tax. It was a patently unconstitutional scheme. Petitioners in this proceeding seek a refund of taxes paid where there was no legislative power to levy the invalid taxing scheme. See *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 817 (taxes paid pursuant to invalid tax scheme entitled Petitioner to a refund).

This Court in *McKesson*, after a full review of Constitutional safeguards against unlawful exactions by a state under the Due Process Clause, said 496 U.S. 37:

> "Had the Florida courts declared the Liquor Tax invalid either *because* (other than its discriminatory nature) *it was beyond the State's power to impose*, as was the unapportioned tax in O'Connor, or because the taxpayers were absolutely immune from the tax, as were the Indian Tribes in Ward and Carpenter, *no corrective action by the State could cure the invalidity of the tax during the contested tax period*. The State would have had no choice but to "undo" the unlawful deprivation by refunding the tax previously paid under duress, because allowing the State to "collect these unlawful taxes by coercive means and not incur any obligation to pay them back ... would be in contravention of the Fourteenth Amendment." *Ward*, 253 U.S. at 24, 64 L.Ed. 751, 40 S.Ct. 419; *see also Carpenter*, 280 U.S. at 369, 74 L.Ed. 478, 50 S.Ct. 121 (emphasis supplied).

No property owner who has paid the invalid tax for 1991 and 1992, even under protest, has any right to any refund under *Edgewood III*, the penaltimate statement of Texas law, which prospectively deferred until 1993 any legal remedies against the CED tax. This is exactly what *McKesson* prohibits as a denial of federal due process. The Court of Appeals' assumption that Texas law provides an adequate remedy is clearly erroneous as a matter of fact and if left standing would viciate this Court's mandate in *McKesson*.

It is significant that the illegal tax involved here is a third attempt by the Texas Legislature to reach out and tax subjects beyond its Texas Constitutional authority. *Edgewood III*, 826 S.W.2d 489 (Tex. 1992); *Edgewood*

Independent School District v. Kirby, 804 S.W.2d 491 (Tex. 1991) (Edgewood II); *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (Edgewood I).

The decision in *Edgewood III*, to accord taxpayers solely prospective 1993 relief only after all of the 1991 and 1992 invalid, illegal ad valorem taxes were collected and paid, foreclosed any taxpayers opportunity under Texas state law for any refund of the taxes as the decision prohibited using the illegality of the Act as a "defense to the payment" of these taxes. *Edgewood III*, 826 S.W.2d at 522. This preclusion by Texas law of any refund procedure was in total derogation of any state statutory remedies. This deprived Texas taxpayers of all "plain", "speedy" and "efficient" remedies. In the absence of these remedies Petitioners have no predeprivation or postdeprivation relief from these invalid taxes. The absence of any meaningful predeprivation or post deprivation remedy for these takings of property through invalid taxes, exacted under duress, does not provide the procedural safeguards against illegal exactions as required by *McKesson*.

The statutory prohibitions of the Tax Injunction Act are only applicable to petitioners when such procedural safeguards exist. *Rosewell v. LaSalle Nat'l. Bank*, 450 U.S. 503 (1981).

This Court has held that even a partially adequate state law remedy is not enough to deprive the federal district court of jurisdiction under the Tax Injunction Act. *Georgia R. Co. v. Redwine*, 342 U.S. 299, 302-302 (1952) (state law remedy limited to 15% of invalid taxes paid). This Court's recent analysis of the procedural due process limitations on a state's retention of illegal, invalid, unconstitutional taxes certainly raises important questions regarding the

applicability of the Tax Injunction Act, in the absence of any predeprivation or postdeprivation remedies under state law.

The Court of Appeals' rejection of federal jurisdiction without any serious consideration of the lack of state remedies for these Petitioners will not withstand any scrutiny. This "rejection" bars any claim for any refund of unconstitutional state taxes as required by this Court's decisions and the commands of federal due process.

CONCLUSION

Plenary review by this Court is warranted to insure that any encroachment upon this Court's decision in *McKesson* and the procedural due process safeguards of the Fourteenth Amendment is not allowed. This Court should provide the guidance needed to insure that the state courts are not permitted to arbitrarily protect public treasuries from the commands of the Due Process Clause at the expense of taxpayers being unlawfully deprived of their property under state law.

Respectfully submitted,

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APPENDIX A

U.S. COURT OF APPEALS
F I L E D
JAN 05 1994
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1502
Conference Calendar

GRAYDON L. GIBSON ET AL.,
Plaintiffs-Appellants,

versus

DALLAS COUNTY EDUCATION DISTRICT,
and All Other County Education
Districts in the State of Texas,
Defendant-Appellee,

ATTORNEY GENERAL, State of Texas,
and TEXAS EDUCATION AGENCY,
Intervening Defendants-Appellees.

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Appeal from the United States District
Court for the Northern District of Texas
USDC No. 3:92-CV-2388-R

- - - - - - - - - -

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM: *

The suit by Texas taxpayers Graydon L. and Oleta Gibson seeking a refund from state ad valorem taxes is barred by the Tax Injunction Act, 28 U.S.C. § 1341.

The Tax Injunction Act applies to suits for state tax refunds. *Bland v. McHann*, 463 F.2d 21, 27 (5th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973). The Act prohibits the district court from exercising jurisdiction over state tax refund suits unless the state fails to supply a plain, speedy, and efficient remedy for the taxpayer's claim. *Smith v. Travis County Education District*, 968 F.2d 453, 455-56 (5th Cir. 1992); *United Gas Pipe Line Co. v. Whitman*, 595 F.2d 323, 330 (5th Cir. 1979).

"The inquiry into whether a plain, speedy and efficient remedy exists focuses on whether a state provides a procedural vehicle that affords taxpayers the opportunity to raise their federal constitutional claims." *Smith*, 968 F.2d at 456. A state provides a plain, speedy, and efficient remedy when it provides taxpayers with a full hearing and judicial determination with ultimate review available in the United States Supreme Court. *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 514, 101 S.Ct. 1221, 67 L.Ed.2d 464 (1981).

Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

"The general rule is that the availability of a refund action satisfies section 1341's requirement that an adequate state remedy exists." *United Gas*, 595 F.2d at 331. If such is available, in actions for the refund of state taxes the federal courts must defer to the state administrative and judicial remedies, and the aggrieved party must pursue relief in state courts. *Id.* at 325.

The taxpayers have a "plain, speedy and efficient" remedy under the Tax Injunction Act because Texas courts would allow them to assert their federal due process claims. *See McQueen v. Bullock*, 907 F.2d 1544, 1547-48 and n. 9 (5th Cir. 1990), *cert. denied*, 499 U.S. 919 (1991). Texas "has a vast arsenal to assure orderly adjudication of [] serious federal constitutional [questions]" in state tax suits." *Id.* at 1550 (internal quotation and citation omitted).

As in *Smith*, "[t]he taxpayers have not demonstrated that the state courts have refused to entertain their federal claim in their pending state court actions. Nor do they show that their state remedy is uncertain or speculative." *Smith*, 968 F.2d at 456.

AFFIRMED.

ENTERED ON DOCKET
——— PURSUANT
TO F.R.C.P: RULES
58 AND 79a

U.S. DISTRICT COURT
NORTHERN DISTRICT
OF TEXAS
F I L E D
MAY 17 1993
NANCY DOHERTY, CLERK
BY———————
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GRAYDON L. GIBSON, OLETA GIBSON, and ALL OTHER TAXPAYERS IN TEXAS SIMILARLY SITUATED.	§	
Plaintiffs,	§	CA 3-92-
vs.	§	2388-R
DALLAS COUNTY EDUCATION DISTRICT, and ALL OTHER COUNTY EDUCATION DISTRICTS IN THE STATE OF TEXAS,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Now before this Court are the motions to dismiss of Defendant Dallas County Education District and Intervenors Texas Education Agency and the Attorney General of Texas. Because the judgment in *Smith v. Travis County Education District*, 968 F.2d 453 (5th Cir. 1992), bars Plaintiffs from bringing their suit in federal district court, this Court GRANTS the motions to dismiss of Defendants and Intervenors.

In *Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District*[1] ("*Edgewood III*"), the Supreme Court of Texas held that the public school finance system permitting county education districts ("CEDs") to levy ad valorem taxes violated the State Constitution.[2] However, the Supreme Court deferred the effect of its ruling to prevent any disruption in the collection of the 1991 and 1992 CED taxes and expressly stated that: "Our ruling is not to be used as a defense to the payment of any such taxes." [3]

In the case before this Court, two taxpayers who paid 1991 and 1992 ad valorem taxes to the Dallas CED claim that *Edgewood III* leaves them without any legal right or procedure to obtain a refund of their taxes. Plaintiffs claim that this lack of legal remedy violates the Due Process Clause of the Fourteenth Amendment. On February 2, 1993, this Court granted leave for the Attorney General of Texas and the Texas Education Agency to intervene in the action Defendants and Intervenors contend that Plaintiffs' claims are barred by the Eleventh Amendment, the Tax Injunction Act, and the doctrine of *res judicata*.

Analysis

In *Smith v. Travis County Education District*,[4] Texas taxpayers challenged the 1991 and 1992 collection of ad valorem taxes that *Edgewood III* had found in violation of the

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1. 826 S.W.2d 489 (Tex. 1992).

2. *Id.* at 524.

3. *Id.* at 522

4. 968 F.2d 453 (5th Cir. 1992).

State Constitution. The taxpayers claimed that the Supreme Court's ruling that plaintiffs could not use the unconstitutionality of the ad valorem taxes as a defense to paying or seeking a refund of the taxes violated their Fifth and Fourteenth Amendment due process rights. The Fifth Circuit held that the Tax Injunction Act barred the district court from exercising subject matter jurisdiction over the case and remanded the case to the district court with instructions to dismiss.[5]

This Court does not discern any difference between the claims of Plaintiffs in the instant case and the claims of the Smith plaintiffs. The district court defined the central issue in *Smith*:

> [W]hether the continued enforcement of a funding scheme that is concededly unconstitutional under the State's own constitution violates the Due Process clause of the Fifth and Fourteenth Amendments and 42 U.S.C. Section 1983, where the State's own highest court has declared that the State's taxpayers may not use that infirmity as a defense to either avoid paying or seeking refund of the taxes due under the scheme.[6]

---

5. *Id.* at 456. The Tax Injunction Act provides that:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

6. *Smith v. Travis County Education District*, 791 F. Supp. 1170, 1185 (W.D. Tex.), vacated, 968 F.2d 453 (5th Cir. 1992). The Fifth Circuit set out the *Smith* plaintiffs' claims on appeal from the district court:

In the instant case, Plaintiffs define their claims in a manner legally indistinguishable from *Smith*:

> (a) that Plaintiffs have no meaningful procedure or remedy under Texas law to recover monies illegally assessed and collected by the CEDs in violation of the due process clause of the Fourteenth Amendment; (b) that Plaintiffs are seeking recovery of those monies in this action on the basis that Texas law leaves them without any legal right or procedures by which they may recover the admittedly illegal, unlawful taxes; and (c) that Texas law says the CEDs have no obligation to repay this invalid tax which was beyond the power of the legislature to impose and that no corrective action can cure the invalidity of the CED tax for 1991 and 1992.[7]

Furthermore, the district court certified *Smith* as a class action. The court designated the plaintiffs as the class comprising 1991 and 1992 ad valorem taxpayers in Texas and certified the defendants as the class comprising the Texas

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> The taxpayers sought a declaratory judgment that the imposition and collection of the 1991 and 1992 CED taxes violated the due process clause of the Fourteenth Amendment to the U.S. Constitution. They also sought an injunction requiring that the State of Texas fashion an appropriate post-deprivation remedy to the unconstitutional collection of the 1991 CED taxes already paid, and an injunction prohibiting collection of the 1992 CED taxes.

Smith, 968 F.2d at 454-55.

7. Plaintiffs' Brief in Opposition to Intervenors' Motion to Dismiss at 5 (Feb 23, 1993).

CEDs [8] Plaintiffs in the instant case are two taxpayers who paid ad valorem taxes in 1991 and 1992 to Defendant Dallas CED.[9] This Court finds that Graydon L. Gibson and Oleta Gibson were members of the plaintiff class certified by the district court in *Smith*. This Court also finds that the Dallas CED was a member of the defendant class certified in *Smith*. Accordingly, this Court concludes that *Smith* resolved and extinguished the claims between Plaintiffs and Defendant in the instant case.

Conclusion

For the reasons stated, this Court GRANTS the motions to dismiss of Defendants and Intervenors and DISMISSES with prejudice Plaintiffs' claims.

SIGNED THIS 14 DAY OF May , 1993.

/s/ Jerry Buchmeyer
UNITED STATES DISTRICT JUDGE
JERRY BUCHMEYER

---

8. *Smith* 91 F. Supp, at 1176, 1178-81.

9. Amended Class Action Complaint at 2 (Feb. 10, 1993).

U S DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
F I L E D
17 1993
NANCY DOHERTY, CLERK
BY _____
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GRAYDON L. GIBSON, ET AL.,	§	
Plaintiff,	§	
vs.	§	3:92-CV-
	§	2388-R
DALLAS COUNTY EDUCATION	§	
DISTRICT	§	
Defendant.	§	

ORDER

In accordance with this Court's Memorandum Opinion, granting defendants' and intervenors' Motion to Dismiss, this case is **DISMISSED**.

SIGNED THIS 17TH DAY OF MAY , 1993.

/s/ Jerry Buchmeyer
UNITED STATED DISTRICT JUDGE
JERRY BUCHMEYER

ENTERED ON DOCKET
——— PURSUANT
TO F.R.C.P. RULES
58 AND 79a

No. 93-1294

Supreme Court, U.S.
FILED
MAR 17 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

GRAYDON L. GIBSON, OLETA GIBSON,

Petitioners,

v.

DALLAS COUNTY EDUCATION DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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QUESTIONS PRESENTED

1. Should this Court grant a Writ of Certiorari where the Fifth Circuit Court of Appeals has applied the Tax Injunction Act, 28 U.S.C. § 1341 (1993), to bar a suit by Texas taxpayers seeking a refund of State ad valorem taxes, on the basis that the retention of the tax, held invalid under the Texas Constitution, violates the due process clause of the Fourteenth Amendment to the United States Constitution and where the taxpayers have not demonstrated that the Texas courts have refused to entertain their Federal claim?

2. Should this Court grant a Writ of Certiorari where the Fifth Circuit Court of Appeals has applied the Tax Injunction Act, 28 U.S.C. § 1341, to bar a suit by Texas taxpayers seeking a refund of State ad valorem taxes, on the basis that the retention of the tax, held invalid under the Texas Constitution, violates the due process clause of the Fourteenth Amendment to the United States Constitution, and where the Texas taxpayers failed to establish the absence of a plain, speedy and efficient remedy under State law?

3. Should this Court grant a Writ of Certiorari where the Fifth Circuit Court of Appeals has applied the Tax Injunction Act, 28 U.S.C. § 1341, to bar a suit by Texas taxpayers seeking a refund of State ad valorem taxes, on the basis that the retention of the tax, held invalid under the Texas Constitution, violates the due process clause of the Fourteenth Amendment to the United States Constitution, and where the taxpayer claims are nonetheless

QUESTIONS PRESENTED – Continued

barred by the Eleventh Amendment to the United States Constitution?

4. Whether Teas afforded the Petitioners a meaningful opportunity to secure post-payment relief for taxes already paid pursuant to a tax scheme found invalid under the Texas Constitution?

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No. 93-1294

In The

Supreme Court of the United States

October Term, 1993

GRAYDON L. GIBSON, OLETA GIBSON,

Petitioners,

v.

DALLAS COUNTY EDUCATION DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

TO THE UNITED STATES SUPREME COURT:

Dallas County Education District, Attorney General of Texas, and the Texas Education Agency file this Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, asking this court to deny the petition for writ of certiorari to review the opinion issued on January 5, 1994 by the United States Court of Appeals for the Fifth Circuit. In support of this request, Respondents would respectfully show the Court as follows:

JURISDICTION

Jurisdiction is based upon 28 U.S.C. § 1254(1)(1993).

STATEMENT OF THE CASE

On April 15, 1991, the 72nd Texas Legislature passed Senate Bill 351, effective August 26, 1991, which amended the Texas Education Code and the Texas Tax Code (Acts of 1991, 72nd Leg., 1st C.S., Ch. 20, 1991, Tex. Gen. Laws 381, amended by Act of May 27, 1991, Tex. Gen. Laws 1475; Tex. Educ. Code § 20.941 et seq.) This legislation amended the State public school finance system and created 188 County Education Districts (CEDs), a new type of taxing unit, which imposed ad valorem taxes, beginning with tax year 1991.

On January 30, 1992, the Texas Supreme Court held that the Texas public school finance system levied a State ad valorem tax in violation of Article VIII, § 1(e) of the Texas Constitution, and permitted County Education Districts ("CEDs") to levy ad valorem taxes without prior vote or approval in violation of Article VII, § 3 of the Texas Constitution. *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 524 (Tex. 1992) (*Edgewood III*). Because the State legislature was not in regular session, the Texas Supreme Court chose to defer the effect of its relief for seventeen months to avoid disruption of public school operations and to enable the legislature to consider all options fully. *Id.* at 522. The Texas Supreme Court directed the State district judge to reissue an injunction to prohibit the State Commissioner of Education and Comptroller from giving

effect to certain provisions of the Texas Education Code, but stayed the effect of the prohibition until June 1, 1993. *Id.* at 523 and n. 42, 524. The Texas Supreme Court held that its ruling was only to be applied prospectively to the 1993 tax year and was not to be used as a defense to the payment of the 1991 and 1992 CED taxes. *Id.* at 522.[1]

Petitioners filed suit against the Dallas County Education District to recover 1991 and 1992 ad valorem taxes paid to the CED on the basis that the retention of the CED taxes violated the due process clause of the Fourteenth Amendment to the United States Constitution. Petitioners also sought class action certification pursuant to Rule 23 of the Federal Civil Procedure. The Texas Attorney General and the Texas Education Agency intervened in this action.

The United States District Court for the Northern District of Texas dismissed the Petitioners' complaint on

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[1] The Texas public school finance system has since been amended and the CED's abolished. (Senate Bill No. 7, Acts of 1993, 73 Leg., R.S., ch. 347 § 413(1), eff. May 31, 1993, 1993 Tex. Sess. Law Serv. 8 (Vernon), to be codified to TEX. EDUC. CODE; abolished the CEDs and required the transfer of the funds, the contracts, assets and liabilities of the CEDs to the component Independent School Districts in the manner provided by rule of the Texas Commissioner of Education. The Texas Commissioner of Education promulgated Rule 61.1001 of the Texas Education Agency which required the appointment of a successor-in-interest). 18 Tex.Reg. 5697 (1993) codified at 19 TEX. ADMIN. CODE § 61.1001) (TEX EDUC. AGENCY). Pursuant to Texas Education Agency Rule 61.1001, the Dallas CED appointed the Irving Independent School District as the successor in interest to collect taxes and pay debts of the Dallas CED.

the basis of res judicata. The District Court below determined that the judgment in *Smith v. Travis County Education District*, 968 F.2d 453, 455-56 (5th Cir. 1992)[2] barred the Petitioners from bringing the action in Federal District Court because in that case the Fifth Circuit Court of Appeals held that the Tax Injunction Act, 28 U.S.C. § 1341, barred the District Court from exercising subject matter jurisdiction over identical taxpayer claims. On January 5, 1994, the Court of Appeals for the Fifth Circuit affirmed the lower court's dismissal, holding the Tax Injunction Act, 28 U.S.C. § 1341, barred the Petitioners' suit for a refund of state ad valorem taxes.

SUMMARY OF THE ARGUMENT

The Fifth Circuit's application of the Tax Injunction Act, 28 U.S.C. § 1341, to bar Petitioners' suit for a refund of the 1991 and 1992 CED taxes does not warrant review by this Court because the decision correctly applies this Court's precedent and there is no circuit conflict. The Court of Appeals correctly applied the Tax Injunction Act

[2] In *Smith*, two separate groups of Texas taxpayers filed suit against the Travis County Education District and all other CEDs in the Federal District Court, seeking a refund of the 1991 and 1992 CED taxes on the basis that the CED taxes violated the due process clause of the Fourteenth Amendment to the U.S. Constitution. The Fifth Circuit held that the Tax Injunction Act barred the District Court from exercising subject matter jurisdiction over the taxpayer class action. The *Smith* court designated the Plaintiffs' class as consisting of the 1991 and 1992 ad valorem taxpayers in Texas and certified the Defendant class as comprising the Texas CEDs.

because no Federal question was presented for review and because Texas law provides adequate judicial procedures for the Petitioners to bring their Federal claims. The issue is not whether the retention of the CED tax violates the due process clause of the United States Constitution, but rather whether the Tax Injunction Act and the Eleventh Amendment deprive the Court of jurisdiction. The Petitioners incorrectly focus on whether the taxpayers will receive relief in State court rather than the inquiry required under the Tax Injunction Act or whether Texas law provides a plain, speedy and efficient remedy. Petitioners' assumption that the CED taxes were paid under duress in violation of Federal law, and that Texas law fails to provide an adequate remedy, is unsubstantiated and clearly erroneous.

ARGUMENT

I. TAX INJUNCTION ACT BARS PETITIONERS' CLAIMS

This Court has consistently held that the Tax Injunction Act bars Federal district courts from asserting jurisdiction in cases challenging State Tax systems, unless the State fails to supply a plain, speedy and efficient remedy for the taxpayers' claim. *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299 (1943). The Act was intended to drastically limit federal interference with so important a local concern as the collection of taxes. *Rosewell v. LaSalle Nat'l. Bank*, 450 U.S. 503, 522 (1981). The Act imposes an equitable duty on Federal district courts to

refrain from exercising jurisdiction over claims arising from State revenue collection. *McQueen v. Bullock*, 907 F.2d 1544 (5th Cir. 1990), *cert. denied*, 499 U.S. 919 (1991). Further, taxpayers are barred by the principles of comity from asserting actions against the validity of State tax systems in Federal court. *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 116 (1981). Therefore, the Tax Injunction Act deprived the district court below from asserting jurisdiction unless it found that the Texas law failed to supply a plain, speedy and efficient remedy for the Petitioners' claims.

Since the Tax Injunction Act is intended to be a broad jurisdictional impediment to Federal Court interference with the administration of State tax systems, the District Court below was correct in dismissing Petitioners' claims unless Texas law failed to offer an effective remedy. This Court stated the requirements of a plain, speedy and efficient remedy in *Rosewell*, 450 U.S. at 512-27. The Court first noted that § 1341 on its face requires a State-Court remedy that meets certain minimal procedural criteria, a standard which is also expressed as allowing for "a full hearing and judicial determination at which the taxpayer may raise any and all constitutional objections to the tax". The inquiry focuses on whether a State provides a procedural vehicle that affords taxpayers the opportunity to raise their Federal Constitution claims. *Rosewell*, 450 U.S. at 512-13. A State provides a plain, speedy and efficient remedy when it provides taxpayers with a full hearing and judicial determination, with ultimate review, available in the United States Supreme Court, pursuant to 28 U.S.C. § 1257 (1993). *Rosewell*, 450 U.S. at 514.

The Petitioners do not allege that the State fails to furnish a procedural avenue for them to pursue their Federal due process claims. Rather, the taxpayers argue that the Texas Supreme Court's decision in *Edgewood III* eliminates the possibility of a State remedy by specifying that its ruling could not be used as a defense to the payment of taxes under the invalidated public school finance system. This argument provides no basis for circumventing the jurisdictional bar imposed by the Tax Injunction Act. *See Smith v. Travis County Educ. Dist.*, 968 F.2d 453 (5th Cir. 1992); *Franchise Tax Bd. v. Alcan Aluminum*, 493 U.S. 331, 340-41 (1990); *Rosewell*, 450 U.S. at 512-17; *Redd v. Lambert*, 674 F.2d 1032, 1036 (5th Cir. 1982). (There is no indication that Congress intended that the lower Federal Courts would provide supplemental relief whenever a litigant does not receive all of the relief he seeks in State court). As in *Smith*, the Petitioners have not demonstrated that the Texas courts have refused to entertain their Federal claim, nor have they shown that their State remedy is uncertain or speculative.

II. TEXAS TAX CODE PROVIDES EFFECTIVE REMEDY

The Texas tax system which existed prior to the Texas Tax Code qualified as a plain, speedy and efficient remedy for purposes of the Tax Injunction Act. *City of Houston v. Standard Triumph Motor Co.*, 347 F.2d 194, 199 (5th Cir. 1965), *cert. denied*, 382 U.S. 974 (1966). The Texas courts have held that the Texas Tax Code meets the due process requirements of both the United States and Texas

Constitutions. *General Electric Credit Corp. v. Midland Central Appraisal Dist.*, 808 S.W.2d 169, 171-72 (Tex. App. – El Paso 1991), *affirmed in part rev'd in part*, 826 S.W.2d 124 (Tex. 1991); *Brooks v. Bachus*, 661 S.W.2d 288 (Tex. App. – Eastland 1983, writ ref'd n.r.e.); *Texas Architectural Aggregate, Inc. v. Adam*, 690 S.W.2d 640, 643 (Tex. App. – Austin 1985, no writ); *Dallas County Appraisal District v. Lal*, 701 S.W.2d 44, 47 (Tex. App. – Dallas 1985, writ ref'd n.r.e.). (The Tax Code satisfies the due process requirements of the Texas Constitution); *Texas Pipeline Co. v. Anderson*, 100 S.W.2d 754 (Tex. Civ. App. – Austin 1937, writ ref'd), *cert. denied*, 302 U.S. 724 (1937).[3]

The Tax Injunction Act is applicable to Petitioners because pre-deprivation and post-deprivation procedural safeguards exist. The Texas Tax Code provided Petitioners with a plain, speedy and efficient remedy for purposes of the Tax Injunction Act. Chapters 41 and 42 of the Texas Tax Code prescribe the administrative and judicial procedures to be followed by a taxpayer to challenge the appraised value, situs, ownership, constitutionality or any other action which adversely affects the property owner.[4] A taxpayer who follows the prescribed procedures of the Texas Tax Code is not foreclosed from

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[3] The due process guarantees set forth in the Open Courts provision of the Texas Constitution also assure that Texas citizens who bring common law actions will not unreasonably be denied access to the courts. *Sax v. Votteler*, 648 S.W.2d 661, 664 (Tex. 1983).

[4] Under the Texas Tax Code system, the County Appraisal District, a political subdivision, is charged with the responsibility of appraising property and administering exemptions for ad valorem taxation on a county-wide basis. A taxpayer may protest any action by the Appraisal District to the Appraisal

raising the issue of constitutionality.[5] Thus, Petitioners may attack any tax assessment as long as they follow the statutory procedure. A comparison of the procedures of the Texas Tax Code with those procedures involved in *Fair Assessment* and in *Rosewell* establishes that the Texas property tax system does provide a plain, speedy and efficient remedy, precluding Federal jurisdiction.

Petitioners have a pre-deprivation remedy available to contest the CED tax by filing suit in accordance with the Texas Tax Code. In fact, Petitioners could have joined *Edgewood III* with their claims that the CED tax violated the Texas Constitution and that the collection of the CED taxes violated Federal due process. Entitlement of due process with respect to deprivations of property can either arise in a pre-deprivation context or in a post-deprivation stage; but the United States Constitution does not require due process at both stages. *Woods v. Federal Home Loan Bank Board,* 826 F.2d 1400 (5th Cir. 1987), *cert. denied,* 108 S. Ct. 1221 (1988).

III. MCKESSON INAPPLICABLE

Since Petitioners were not foreclosed from asserting their Federal claims at the pre-deprivation stage, *McKesson v. Division of Alcoholic Beverages and Tobacco,* 496

Review Board, an administrative tribunal created to determine taxpayer protests. Chapter 42 of the Texas Tax Code then provides for a right of appeal for the dissatisfied taxpayer to the State district court.

[5] Section 41.41(9) of the Texas Tax Code permits the property owner to protest any action which adversely affects and applies to the property owner.

U.S. 18 (1990) is inapplicable. There, taxpayers challenged a Florida excise tax as discriminatory because it favored manufacturers and distributors of beverages made from products grown in Florida. After exhausting the State administrative avenues, the taxpayers filed suit for refund of the excise tax. The Florida Supreme Court held the tax to have an unconstitutional discriminatory effect in violation of the commerce clause of the United States Constitution, Article VIII, clause 3, but affirmed the denial of the refund of the excess taxes paid under the discriminatory system. The taxpayers exhausted the appellate process and on appeal to this Court, Justice Brennan stated,

> "We have repeatedly and without question accepted jurisdiction to review issues of federal law arising in suits brought against States in state court; indeed, we frequently have entertained cases analogous to this one, where a taxpayer who had brought a refund action in state court against the State asked us to reverse an adverse state judicial decision premised upon federal law."

McKesson, 496 U.S. 18 at 29.

Thus, *McKesson* represents this Court's exercise of appellate jurisdiction over cases arising in state court that present a federal question.

There are important distinctions between *McKesson* and this case. First, the *McKesson* taxpayers completely exhausted the State remedies before appealing to the Federal courts. Here, the Petitioners have made no effort to exhaust available State remedies before resorting to the

Federal courts. Next, the *McKesson* taxpayers sought protection from discrimination by a State in favor of local business in violation of the commerce clause of the U.S. Constitution. In *McKesson*, the Florida court refused to protect the right guaranteed to the taxpayers by the United States Constitution. In the instant case, the Petitioners seek a refund of an invalid tax under the Texas Constitution and thus, the asserted right is one guaranteed by the Texas Constitution, not the Federal Constitution. Finally, *McKesson* demonstrates that the Tax Injunction Act operates only to deprive the Federal district courts of jurisdiction over State tax disputes. This Court always retains jurisdiction to entertain an appeal from the State court of last resort on a showing of deprivation of federally protected rights. The Petitioners, however, are attempting to shortcut the procedure properly followed by the *McKesson* taxpayers. Inherent in the Petitioners due process claims is the assumption that the State Court would improperly decide the federal question were it given the opportunity. This assumption, and the Petitioners' resultant behavior, is precisely what the Tax Injunction Act prohibits.

IV. ABSENCE OF FEDERAL QUESTION

Petitioners have not presented this Court with a federal question. The presence or absence of a federal claim hinges on *McKesson*. When a State system of taxation is struck down as being in violation of the United States Constitution, Fourteenth Amendment due process rights arise. On the other hand, if the basis for the tax being struck down was State law, the termination or retroactivity or prospectivity of that decision is within the sole

authority of the State itself, and no federal question arises under the Fourteenth Amendment. *American Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167 (1990); *Great Northern Ry. Co. v. Sunburst Oil and Refinery Co.*, 287 U.S. 358 (1932); *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971). When questions of State law are at issue, this Court has recognized a State Court's right to give its ruling prospective or retrospective application. The Texas Supreme Court's determination that it must balance the demands of the Texas Constitution which require the Legislature make provisions for an efficient system of public education with the prohibitions of a tax levy without local elections, by deferring the effect of its ruling in *Edgewood III* until June 1, 1993, is purely a State matter. The Texas Supreme Court choice of remedy does not create a federal question. Thus, no federal question is presented and the Court of Appeals was correct in applying the Tax Injunction Act.

V. ELEVENTH AMENDMENT BARS PETITIONERS' CLAIMS

The Petitioners' claims are also barred by the Eleventh Amendment to the United States Constitution. The Texas Supreme Court declared in *Edgewood III* that the CED was an invalid State ad valorem tax. The CEDs were essentially an arm of the State for the purposes of collecting a state ad valorem tax. Once the tax was held to be a state ad valorem tax, the entire public school finance system for the State of Texas was declared unconstitutional by the Texas Supreme Court. The Eleventh Amendment bars suit against State officials when the State is the

real party in interest. Thus the bar of the Eleventh Amendment of the United States Constitution extends to the CED to bar Petitioners' claims. *See Farias v. Bexar County Board of Trustees*, 925 F.2d 866 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 193, 116 L.Ed.2d 153 (1991); *Stem v. Ahern*, 908 F.2d 1, 4 (5th Cir. 1990), *cert. denied*, 498 U.S. 1069 (1991).

CONCLUSION

The Fifth Circuit's application of the Tax Injunction Act, 28 U.S.C. § 1341, to bar Petitioners' suit for a refund of the CED taxes does not warrant review by this Court.

The Court of Appeals correctly applied this Court's precedent and there was no Circuit conflict.

Respectfully submitted,

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GRAYDON L. GIBSON, OLETA GIBSON,
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DALLAS COUNTY EDUCATION DISTRICT,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONERS REPLY TO BRIEF IN OPPOSITION

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PETITIONERS REPLY TO BRIEF IN OPPOSITION

INTRODUCTION

The petitioners respectfully submit this reply brief in response to the Respondent's Brief in opposition to the petition for a writ of certiorari.

Petitioners have asked this Court to hear this case to require Dallas County Education District, et al, to respond to the Federal Constitution's limitations on a state's retention of admittedly invalid, illegal taxes collected, under duress, by a legislative enactment that is unconstitutional under the State's Constitution.

Respondent's opposition raises an Eleventh Amendment claim of sovereign immunity which is frivolous and without any merit. The opposition brief does not directly address petitioners' arguments for granting this writ, but rather argues, obliquely, general legal principles which have

no application to the applicable Federal Constitutional guarantees which are the reason for granting the writ in this case.

I.

THE ELEVENTH AMENDMENT DOES NOT APPLY

The doctrine of sovereign immunity has no application to this case as the bar of the Eleventh Amendment does not extend to counties and municipal corporations and local school districts. *Mt. Healthy City School District v. Doyle*, 429 U.S. 274, 280 (1977) (Court concluded that a local school district not entitled to assert Eleventh Amendment immunity). The County Education Districts (CED) created by Texas Education Code Sections. 20.941, et. seq., (Resp.Br. p.2) are specifically created as local, independent school districts. Tex. Ed. Code, Sections 20.941 and 20.942. The Eleventh Amendment is not a bar to taxpayers claims in this case.

II.

THE TAX INJUNCTION ACT DOES NOT APPLY

Respondents argument that there is an adequate remedy under the Texas Tax Code to contest the CED tax is incorrect. Respondents have conceded in their factual statement that this case involves an invalid state tax for which the taxpayers could not get any tax refunds for 1991 and 1992 taxes paid. (Resp. Br. pp. 2-3). This Court in *McKesson v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, at 37, (1990), after a full review of constitutional safeguards against such unlawful exactions,

states that the Due Process Clause specifically commands a refund be made under these circumstances. As this Court stated in *American Trucking Assn's v. Smith*. 496 U.S. 167, at 178, 179 (1990):

> When taxpayers involuntarily pay a tax that is unconstitutional under existing precedents, to what relief are those affected taxpayers entitled as a matter of federal law? Our decision in *McKesson* indicates that federal law sets certain minimum requirements that States meet but may exceed in providing appropriate relief.

It is no surprise that respondents' argument makes only unparticularlized references to the existence of "plain, speedy, and efficient remedies" under the Texas Tax Code but nowhere do they provide record citations, statutory citations or otherwise identify this "remedy." No such remedy exists. (*See, Petition For Writ*, p.7).

Respondents' brief fails to respond to this Court's ruling in *Georgia R. Co. v. Redwine*, 342 U.S. 299, 302 (1952) that even a partially adequate state remedy is not enough to deprive the Federal District Court of jurisdiction under the Tax Injunction Act. Petitioners' case is even more egregious. Petitioners have no remedy under Texas law. The Tax Injunction Act does not apply where there are no procedural safeguards under Texas law which protect these taxpayers from having their property taken from them in violation of their due process rights under the Fourteenth Amendment.

III.

MCKESSON CONTROLS

Respondents' argument that *McKesson* is inapplicable and that no federal question is presented here misunderstands and misapplies the Fourteenth Amendment protection this Court has confirmed that the Due Process Clause provides for a states' taxpayers from invalid state taxes. *Harper v. Virginia Dept. of Taxation*, 509 U.S. ___, 125 L.Ed.2d 74, 113 Ct. 2510 (1993) (See fn. 10, 125 L.Ed.2d at 89).

CONCLUSION

The commands of the Due Process Clause of the Fourteenth Amendment and the decisions of this Court enunciating these requirements clearly warrant plenary review and the granting of the writ in this case.

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